

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1023 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  
2. To be referred to the Reporter or not? : NO
  
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
BHARATBHAI MULUBHAI

Versus

AHMEDABAD DIST PANCHAYAT DDO, R & B,

-----  
Appearance:

MR GM AMIN for Petitioners

MR MM TIRMZI for Respondent No. 1

Ms. Hansa B Punani, AGP for Respondent No. 2

-----  
CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 27/06/2000

ORAL JUDGEMENT (per Kadri, J.)

The petitioners, by filing this petition under

Article 226 of the Constitution of India, have prayed to issue writ or mandamus or appropriate direction against the respondents to pay interest at the rate of 9% for the first year and at the rate 15% for the remaining years from the date of taking over possession till the date of declaration of award under Section 11 of the Land Acquisition Act, 1894 (for short, 'the Act') for their acquired lands situated in village Navda, Taluka Dhandhuka, District Ahmedabad.

2. The agricultural lands of the petitioners bearing survey Nos. 426 paiki, 208, 259, 426 etc. situated in the sim of village Navda, Taluka Dhandhuka came to be acquired for the public purpose of laying down road from Navda to Hebatpur by issuance of notification under section 4(1) of the Act, on 4.8.199. After following usual procedure under the Act, declaration under section 6 was made which came to be published on 8.10.1998. Respondent No.2 made his award on January 22, 1999. It is averred in the petition that possession of the lands acquired was taken by the Executive Engineer, Ahmedabad District Panchayat on December 25, 1972 and, therefore, interest under Section 34 is to be paid from the date of taking over possession till declaration of the award. It is further averred that in the award which was made under section 11 of the Act, the amount of interest was not calculated by the respondents and, therefore, the petitioners approached respondent No.2 for payment of amount of interest. It is stated that respondent No.2 informed the petitioners that the amount of interest under Section 34 is to be paid by the acquiring body i.e. respondent No.1. Respondent No.2 directed the petitioners to approach respondent No.1 for payment of interest. It is further averred that the amount of interest is to be calculated by the respondent No.2 but the said authority has not calculated the amount of interest and has not made any demand, though respondent No.1 is agreeable to pay the interest. Several requests were made by the petitioners to respondent No.2 to make payment of interest but it turned down the requests. With the result, the petitioners were constrained to file this petition praying for the relief as stated above.

3. Respondent No.1-acquiring body, in response to the Rule issued by this Court in this petition, has filed affidavit-in-reply, inter-alia, contending that possession of the lands acquired was taken at the relevant time by consent of the petitioners. However, no document was prepared at the relevant point of time with regard to taking over possession of the land as per the provisions of the Act. It is contended in the

affidavit-in-reply that when the possession was taken by the concerned respondents, the said possession was not taken as per the provisions of the Act and, therefore, the other relevant provisions of the Act with regard to payment of interest are to be ignored. In the alternative, it is contended by respondent No.1 that even if the petitioners are entitled for the amount of interest, the same is required to be computed by August 4, 1998 i.e. from the date on which the Notification under Section 4(1) of the Act was published. Respondent No.1 also contended that before granting the amount of interest, the delay of numbers of years caused in making the application by the applicants is required to be taken into consideration.

4. Heard the learned Advocates for the parties. It is not in dispute that the petitioners' land situated at village Navda were placed under acquisition for the public purpose of laying down road from Navda to Hebatpur. It is also not in dispute that after following usual procedures, respondent No.2 made his award on January 22, 1999. In the award, respondent No.2 in para 14 has stated that possession of the acquired lands was taken by the acquiring body by oral negotiations on December 25, 1972 and the amount of interest is to be paid by the acquiring body directly to the claimants as per the provisions of the Act. After making of the award, the petitioners, through learned Advocate, had addressed a notice of November 16, 1999 requesting respondent No.2 to pay interest to the petitioners at the rate of 9% for the first year and at the rate of 15% per annum for the subsequent years. Inspite of sending notice, the petitioners were not paid the amount of interest.

5. Submission of the learned Advocate for respondent No.2 is that when the possession was taken through private negotiations, the petitioners were not entitled to claim interest from the date of taking over possession but at the most they were entitled to interest from the date of notification till making of the award. This submission is devoid of merit and it deserves to be rejected.

6. The Division Bench of this Court in the case of Varsanji Ataji v. State of Gujarat, reported in 1987 (1) GLR 64, while deciding First Appeals No.1838 to 1841 of 1984 and allied First Appeals, had an occasion to deal with such an argument advanced that when possession was taken through private negotiations, the acquiring body and/or the State Government was not liable to pay

interest from the date of taking over possession till making of award. The Division Bench repelled the arguments and contention that when possession is taken prior to acquisition proceedings and with consent of the owner, it would be possession of land under the Act and interest is payable from the date of taking possession, whether possession is taken under the Act or by private negotiation or otherwise in anticipation of valid proceedings under the Act. In the above Appeals, the Division Bench has awarded interest from the date of taking over possession till making of the award as per the provisions of the ACT.

7. Learned Advocate for the petitioners has also invited our attention to another decision of the Division Bench (Coram: P R Gokulakrishnan, C.J. & R J Shah, J, as Their Lordships then were) in Special Civil Application No.7210/88 decided on December 15, 1988 wherein also the Division Bench had awarded interest from the date of taking over possession till making of the award as per the provisions of Section 34 of the Act. In view of the principles laid down in the above mentioned authorities, we are of the opinion that the petitioners are entitled to claim interest from the date of taking over possession i.e. December 25, 1972 till making of the award as per the provisions of Section 34 of the Act.

8. As a result of the foregoing discussion, this petition is allowed. The respondents are directed to calculate the amount of interest and make payment of interest under Section 34 of the Act to the petitioners from the date of taking over possession of the lands i.e. from 25.12.1972 to the date when the award was made by respondent No.2. The respondents shall calculate and make payment of interest as per the provisions of the Act within six months from today. This petition succeeds. Rule made absolute accordingly. No order as to costs.

....

msp